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June 9, 2009

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Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 E Capitol Avenue
Pierre SD 57501

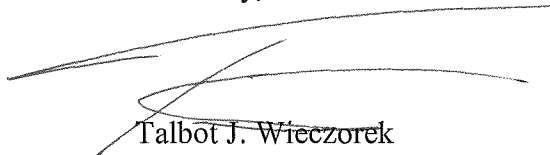
RE: Sprint's Motion to Dismiss (Docket CT09-001)
GPGN File No. 08509.0005

Dear Ms. Van Gerpen:

Enclosed for filing please find Sprint's Motion to Dismiss with a Certificate of Service. I have copied this letter and the Motion to Dismiss to all parties listed in the Service List.

If you have any questions, please call me.

Sincerely,



Talbot J. Wieczorek

TJW:klw
Enclosure
C: Service List
Client

OF THE STATE OF SOUTH DAKOTA

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file from Zone Telecom indicating numerous telephone numbers to be switched, including Mr. Hankel's. (See attachments to Mr. Hankel's complaint.) Sprint does not know, and has no reason to know, why Mr. Hankel's telephone number was included in the batch file list. However, to the extent Mr. Hankel's telephone number was erroneously included in the batch file list, Sprint simply carried out the instructions it received with respect to that telephone number and cannot be considered the "initiating" carrier under SDCL 49-31-93.

4. Furthermore, Sprint was under no obligation to perform a third party verification (TPV) because Sprint was not the "submitting carrier" under the FCC's slamming rules. Those rules distinguish between a "submitting carrier" and an "executing carrier," and provide that only a "submitting carrier" is subject to TPV requirements:

§ 64.1120 Verification of orders for telecommunications service.

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

*(1) No **submitting carrier** shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:*

(i) Authorization from the subscriber, and

(ii) Verification of that authorization in accordance with the procedures prescribed in this section. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures

described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this part as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. 332(c)(8).

47 C.F.R. 64.1120 (emphasis supplied). The complaint clearly shows Sprint was not the submitting carrier.

5. A submitting carrier is defined as a “telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber.” 47 C.F.R. §64.1100(a). Under this definition, Sprint is not a “submitting carrier.” Accordingly, Sprint was under no TPV obligation in this instance.

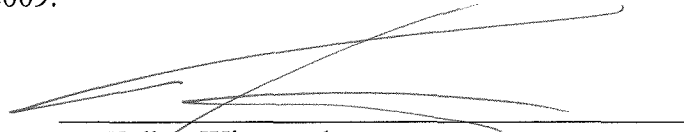
6. The FCC has also expressly acknowledged that the LEC is liable for an erroneous LEC-initiated switch:

... that in situations in which a customer initiates or changes long distance service by contacting the LEC directly, verification of the customer's choice would not need to be verified by either the LEC or the chosen IXC. In this situation, neither the LEC nor the IXC is the submitting carrier as we have defined it. The LEC is not providing interexchange service to that subscriber. The IXC has not made any requests -- it has merely been chosen by the consumer. Furthermore, because the subscriber has personally requested the change from the executing carrier, the IXC is not requesting a change on the subscriber's behalf. ***If a LEC's actions in this situation resulted in the subscriber being assigned to a different interexchange carrier than the one originally chosen by the subscriber, however, then that LEC could be liable for violations of its duties as an executing carrier.***

In the Matter of the Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumer Long Distance Carriers, CC Docket No. 94-129, 14 FCC Rcd 1508, 1595 ¶ 93 (1998) (emphasis supplied).

7. Sprint is neither an "initiating" carrier under SDCL 49-31-93, nor a "submitting carrier" under 47 C.F.R. 64.1120. Accordingly, the complaint against Sprint is without merit and must be dismissed.

Dated this 9th day of June, 2009.



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ATTORNEYS FOR
SPRINT COMMUNICATIONS COMPANY,
L.P.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

In the Matter of the Complaint filed by)
Brian Hankel, Hartford, South Dakota, Against) DOCKET No. CT09-001
Sprint Communications Company L.P., Zone)
Telecom, Inc. and Express Communications, Inc.)
Regarding Unauthorized Switching of Services) **CERTIFICATE OF SERVICE**

The undersigned certifies that on this 9th day of June, 2009, a copy of Sprint's Motion to Dismiss Complaint against Sprint Communications Company, LP was electronically sent to:

MS PATRICIA VAN GERPEN EXECUTIVE DIRECTOR SOUTH DAKOTA PUBLIC UTILITIES COMMISSION 500 EAST CAPITOL PIERRE SD 57501 patty.vangerpen@state.sd.us	MS KARA SEMMLER STAFF ATTORNEY SOUTH DAKOTA PUBLIC UTILITIES COMMISSION 500 EAST CAPITOL PIERRE SD 57501 kara.semmler@state.sd.us
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MR WILLIAM P HEASTON DIRECTOR BUSINESS DEVELOPMENT SDN COMMUNICATIONS bill.heaston@sdncommunications.com	

And by U.S. Mail, first class, postage prepaid to:

MR BRIAN HANKEL
26690 APPLE LANE
HARTFORD SD 57033



Talbot J. Wiczorek